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An Act To Amend the Potato Cull Pile Law

Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, enforcement of laws requiring proper disposal of cull potatoes and maintenance of cull potato piles is essential to minimize the threat of disease; and

Whereas, revisions to the laws governing cull potatoes are needed; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 7 MRSA §1007-A, as amended by PL 2005, c. 512, §43, is further amended to read:

§ 1007-A.Improperly maintaining cull potato piles; public nuisance

1. Declaration of public nuisance. The Legislature declares that the A2 strain of late blight and other potato diseases constitute a clear and present danger to the potato industry in the State, which is a significant part of the State's economy. Control of the A2 strain of potato blight and other potato diseases requires the proper disposal of potato cull potato piles. The Legislature finds it necessary to exercise the police power of the State to require proper disposal of cull potatoes and potato cull potato piles and to provide procedures for the disposal of these potatoes by the department when the ownerresponsible party fails to comply with the requirements of this section. In addition to constituting a civil violation as prescribed in this section, potato cull potato piles that are not managed and disposed of in accordance with these requirements are considered a public nuisance and are subject to action under Title 17, chapter 91.

1-A. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Cull potatoes" means:

(1) Potatoes that are not marketable or usable for human consumption or as seed potatoes;

(2) Potatoes that are used for animal feed;

(3) The residue potatoes left in the field from commercial or seed potato production the preceding year; and

(4) Potatoes that spoil while in storage.

B. "Responsible party" means the owner or lessee of the property on which cull potatoes are found or another person determined to be responsible for the potatoes in accordance with rules adopted under subsection 3.

2. Disposal requirements; maintenance of cull potato piles. The owner or lessee of any real property on which potatoes are grown, or on which potato cull piles are maintained or disposed of, shall properly dispose of potato culls and cull piles in order to destroy the A2 strain of potato blight and other potato diseases. The commissioner shall adopt rules in accordance with subsection 3 to prescribe the proper acceptable methods for disposal of potato culls and cull potatoes and establish best management practices for maintaining cull potato piles. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter II-A. Proper disposal must occur on or before June 10th of each year. No cull piles may be maintained between June 10th and October 1st of each year. By emergency or other rule-making procedures, the commissioner may vary these dates when the type of disposal method or other circumstances require that cull piles be destroyed in order to prevent the spread of significant disease. Except as provided in rules adopted under subsection 3, all cull potatoes must be properly disposed of on or before June 10th of each year. A person who keeps a pile of cull potatoes shall maintain the pile in accordance with best management practices. Upon inspection authorized under subsection 4, the commissioner may determine site-specific best management practices for a pile of cull potatoes and order the responsible party to comply with these practices.

3. Rules. The commissioner may shall adopt any rules necessary to implement this section in accordance with the Maine Administrative Procedure Act, except that the commissioner may shorten or suspend the notice and hearing requirements as necessary to respond to any an imminent threat of disease. Prior to adopting any rules under this section, the commissioner shall consult with the Maine Potato Board except in an emergency. In addition, the commissioner may determine best management practices for the handling of cull potatoes and cull piles in accordance with Title 17, section 2805. The commissioner shall adopt a set of best management practices for the maintenance of cull potato piles between June 10th and October 1st and may adopt a different set of best management practices applicable to piles maintained between October 1st of one year and June 10th of the following year. The commissioner may use emergency rulemaking to temporarily vary:

A. The dates established in subsection 2 when circumstances require that cull potatoes be disposed of prior to the June 10th date to prevent or minimize the spread of disease;

B. The dates established in subsection 2 when weather or economic circumstances allow an extension of the time period during which cull potato piles may be maintained without significantly increasing the threat of disease; and

C. The best management practices prescribed for maintaining cull potato piles when these practices are found inadequate to protect against an imminent threat.

Except in an emergency, the commissioner shall consult with the Maine Potato Board prior to adopting rules under this section. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

4. Department action. The commissioner may take action to properly dispose of ~~potato culls~~ manage cull potatoes and cull potato piles that violate the requirements of this section or any rules of the commissioner adopted to implement this section. The commissioner or the commissioner's designee is authorized to enter any property to inspect ~~potato~~ cull potato piles and to take any action required to secure their proper disposal or management. Designated representatives of the commissioner may, without search warrant, enter at reasonable times any real property, other than a building, where potatoes are grown, stored, packed, loaded for shipment or handled, and may enter any building, either with the consent of the owner, lessee, occupant or agent or pursuant to an administrative search warrant. Notwithstanding the Maine Rules of Civil Procedure, Rule 80E, paragraph (b), the commissioner or the commissioner's designee may obtain an administrative search warrant pursuant to this section by describing the premises to be entered and the purpose of the inspection or other authorized action and by demonstrating that the entry is necessary in order to inspect potato cull piles or otherwise carry out the requirements of this section. This demonstration is deemed to be a demonstration of probable cause.

The costs incurred by the department in removing and properly disposing of or managing cull potatoes and cull potato piles must be reimbursed by the ~~owner or lessee of the property on which the potatoes were found or any other person responsible for the potatoes~~ responsible party or parties, each of whom is jointly and severally liable for those costs to the department. The department, its employees and agents and any person acting on behalf of the department are not liable for any action taken pursuant to this section.

5. Potato Cull Removal Fund. The Potato Cull Removal Fund is established to be used by the department to administer and enforce the provisions of this section and to pay any expenses of ~~potato cull potato~~ management, removal and/or disposal. The commissioner may receive funds from any source to be deposited into this fund, which does not lapse. If at any time the balance of the fund falls below \$15,000, any penalties collected under this section must be deposited into the fund. Otherwise, penalties collected must be deposited into the General Fund.

6. Civil penalties. Any person who violates any of the requirements of this section or any rules adopted under this section commits a civil violation for which a fine of not more than \$1,000 for each violation, together with not more than \$1,000 for each succeeding day of a continuing violation, may be adjudged.

Emergency clause. In view of the emergency cited in the preamble, this legislation takes effect when approved.

Effective April 7, 2008.